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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 221 of 1995
Date of decision: 3.4.2007

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The Commissioner of Income-Tax, Jalandhar

...Petitioner

Versus

M/s Guru Nanak Mercantile Company, Jalandhar

...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

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Present: Mr.Sanjiv Bansal, Advocate for the revenue.

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RAJESH BINDAL, J.

Following question of law had been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short 'the Tribunal') arising out of its order dated 16.10.1992 passed in I.T.A.No.42(ASR)/1988, in respect of the assessment year 1978-79:-

> "Whether on the facts and in the circumstances of the case, the I.T.A.T. was right in law in holding that the extended time limitation period of 180 days stipulated under explanation 1(iv) of Section 153 of the I.T.Act, 1961 was not available to set aside assessment?"

Briefly the facts, as noticed in the statement of case, are that

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the assessee was deriving income from manufacture and sale of domestic appliances and machines tools. Return for the assessment year in question was filed declaring the same at Rs. 94,410/-. The assessment under Section 143 (3) of the Income Tax Act, 1961 (for short 'the Act') was completed vide order dated January 30, 1981 at an income of Rs. 1,62,740/-. In appeal the order of assessment was set aside by the Commissioner of Income-tax (Appeals) (for short, 'the C.I.T.(A)') vide order dated September 10, 1981. After remand, fresh order of assessment was passed by the Assessing Officer on July 21, 1984. Before passing final assessment order, in terms of Section 144 B of the Act, the draft assessment order was forwarded to the assessee on 23.1.1984 and received by the assessee on January 24, 1984. The directions under Section 144 B of the Act from Inspecting Assistant Commissioner were received on July 19, 1984. In appeal against the order of assessment after remand, the C.I.T.(A) partially deleted the additions, however, further appeal by the assessee before the Tribunal was accepted in toto. Relying upon an earlier order passed by the Tribunal in case of **Gheru Lal Bal Chand, Bhatinda Vs. I.T.O.** holding that in terms of Section 153 (2A) of the Act, the assessment having not been completed within two years of the remand, the order was held to be barred by time. The Tribunal did not give the benefit of extended period of limitation of 180 days as stipulated under explanation 1 (iv) to Section 153 of the Act.

We have heard Shri Sanjiv Bansal, learned counsel appearing for the revenue and perused the paper book.

To appreciate the controversy in the present case, it would be relevant to refer to provisions of Section 153 of the Act, which are as under:-

> "153(1). XXX XXX XXX
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> (2) . XXX XXX XXX
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> 2(A) Notwithstanding anything contained in sub-sections (1) and (2), in relation to the assessment year commencing on the Ist day of April, 1971, and any subsequent assessment year, an order of fresh assessment under section 146 or in pursuance of an order, under section 250, section 254, section 263 or

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section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of two years from the end of the financial year in which the order under section 146 cancelling the assessment is passed by the Income-tax Officer or the order under Section 250 or section 254 is received by the Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Commissioner.

(3) The provisions of sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of sub-section (2A) be completed at any time-

(i) Where a fresh assessment is made under section 146;

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order, under section 250, 254, 260, 262, 263 or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act;

(iii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147.

Explanation 1: In computing the period of limitation for the purposes of this section:-

(i) the time taken in re-opening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129, or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court, or

(iii) the period commencing from the date on which the Income-tax Officer directs the assessee to get his accounts audited under sub-section (2A) of Section 142 and ending with the date on which the assessee

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furnishes a report of such audit under that sub-section, or

(iv)the period (not exceeding one hundred and eighty days) commencing from the date on which the Income-tax Officer forwards the draft order under sub-section (1) of Section 144 B to the assessee and ending with the date on which the Income-tax Officer receives the directions from the Inspecting Assistant Commissioner under sub-section (4) of that section, or in a case where no objections to the draft order are received from the assessee, a period of thirty days, or

(v)in a case where an application made before the Income-tax Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section, shall be excluded.

Explanation 2 : Where, by an order referred to in clause (ii) of sub-section (3), any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.

Explanation 3: Where, by an order referred to in clause (ii) of sub-section (3), any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other

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person was given an opportunity of being heard before the said order was passed."

The primary contention raised by the learned counsel for the revenue is that in terms of Sub Section (2A) of Section 153 of the Act, notwithstanding any other period of limitation provided for in sub Section 1 & 2 of Section 153 of the Act, any subsequent assessment in pursuance to an order under Section 250 of the Act may be made at any time before the expiry of period of two years from the end of the financial year in which order under Section 250 is received by the commissioner. Clause (iv) of explanation 1 to Section 153 of the Act clearly provides that while computing the period of limitation for the purposes of the section, period not exceeding 180 days commencing from the date on which Income Tax Officer forwards the draft order under Sub Section (4) of Section 144 B of the Act to the assessee and the ending with the date on which the Income Tax Officer receives the direction from the Inspecting Assistant Commissioner under Sub Section (4) of Section 144 B of the Act, is to be excluded.

It is further contended by learned counsel for the revenue that the Tribunal had gone wrong in interpreting the provisions of Section 153 of the Act. It has completely failed to take notice of the provisions in its entirety. An explanation attached to a Section is part thereof and has to be read along with the provisions.

It is not in dispute in the present case that the order under Section 250 of the Act was passed by C.I.T (A) on September 10, 1981. If normal period of limitation is counted, in terms of Sub Section (2A) of Section 153 of the Act, fresh order of assessment could be passed upto March 31, 1984. However, extended period of limitation to the extent of 180 days is available in terms of Clause (iv) of Explanation 1 to Section 153 of the Act as admittedly, draft order was sent to the assessee under Section 144 of the Act on 23.1.84 which was duly received by the assessee on January 24, 1984, directions in terms of Section 144 of the Act were received back from the Inspecting Assistant Commissioner by the assessing officer on July 19, 1984, if this period of 173 days, as spent in

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proceedings under Section 144 (B) of the Act, is added in the normal period of limitation, the fresh order passed after remand by CIT(A) would clearly fall within the period of limitation as provided for under the Act.

The Tribunal had gone wrong in not giving due effect to clause (iv) of Explanation 1 to Section 153 of the Act. Hon'ble the Supreme Court in **K.P.Madhusudhanan Vs. Commissioner of Income-Tax (2001) 251 ITR 99,** has held that an explanation is part of the Section. Relevant para thereof is extracted below:

> "The Explanation to section 271 (1) (c) is a part of Section 271. When the Assessing Officer or the Appellate Assistant Commissioner issues a notice under section 271, he makes the assessee aware that the provisions thereof are to be used against him. These provisions include the Explanation. By virtue of the notice under Section 271 the assessee is put to notice that, if he does not prove, in the circumstances stated in the Explanation, that his failure to return his correct income was not due to fraud or neglect, he shall be deemed to have concealed the particulars of his income or furnished inaccurate particulars thereof, and, consequently be liable to the penalty under the section. No express invocation of the Explanation to Section 271 in the notice under section 271 is necessary before the provisions of the Explanation are applied."

It has also come to our notice that the matter in the case of Gheru Lal Bal Chand, as referred and relied upon by the Tribunal while deciding the present appeal in favour of assessee, was subject matter of proceedings under Section 256 (2) of the Act before this Court and while dealing with the issue, this Court in **Commissioner of Income-Tax Vs. Gheru Lal Bal Chand (1998) 233 ITR 82** held that the extended period of limitation would be available. The same view was followed in **Commissioner of Income-Tax Vs. Suri Sons (1998) 233 ITR 91** and **Commissioner of Income-Tax Vs. Soccer International (2002) 254 ITR 287.**

For the reasons stated above, the question referred is answered

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in favour of the revenue and against the assessee.

The reference is disposed of, accordingly.

(Rajesh Bindal)
Judge

April 03 , 2007 **(M.M.Kumar)**
Pka **Judge**